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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLI

IN THE

Supreme Court of the United States

October Term, 1972.

72-108

ARCHIE PELTZMAN,

Petitioner.

against

AMERICAN RADIO ASSOCIATION, *et al.*,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

ARCHIE PELTZMAN,
Petitioner Pro Se,
8725 16th Avenue,
Brooklyn, N. Y. 11214

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IN THE SUPREME COURT OF THE UNITED STATES
TERM, 1973

ARCHIE PELTZMAN,

PETITIONER,

- against -

AMERICAN RADIO ASSOCIATION AND ITS OFFICERS, INDIVIDUALLY AND IN THIER RESPECTIVE CAPACITIES, WILLIAM STEINBERG, PRESIDENT, BERNARD L. SMITH, SECRETARY - TREASURER, JOSEPH Y. RUBIN, TED BERMAN, HARVEY STRICHARZ, FLOYD HEPTING AS NATIONAL COUNCIL MEMBERS,

RESPONDENTS,

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, STATE OF NEW YORK.

The petitioner, Archie Peltzman, prays that a writ of certiorari be issued to review a final decree of The Court Of Appeals, State of New York, entered on or about December 28, 1972, denying petitioner leave to appeal a judgment of The Appellate

Division First Department, which affirmed unanimously a decision of The Supreme Court, Special Term Of New York City, which dismissed for lack of jurisdiction a suit for damages against a maritime union, and its individual officers for causing the discharge of the petitioner from his permanent job aboard the S/S GREEN RIDGE.

OPINIONS BELOW

The opinion of Special Term Supreme Court of New York dismissing the complaint for lack of jurisdiction is attached as Appendix I dated January 20, 1972, and is reported in 327 NYS 2d 505.

The order of Special Term, Supreme Court of New York denying motion to vacate decision of January 20, 1972 is attached as Appendix 2.

JURISDICTION

The final decree of The Court Of Appeals, State Of New York, denying permission to appeal, was received on January 3, 1973. He filed a notice of appeal to The Court Of Appeals on January 26, 1973, and to the

Supreme Court Of New York on the same date.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec.I257 (2) and under the U.S. Constitution Art. III Sec. 2.Also under 28 U.S.C. Sec.I33I,and 42 U.S.C. Sec. I983.

QUESTIONS PRESENTED

I-Do the State Courts have jurisdiction of a seaman's suit against a maritime union and its officers individually,who prevent him from rejoining his ship by invoking the union-security clause in a contract with his employer,thereby causing his dismissal from his ship.?

2-Does a seaman who leaves his permanent job aboard his ship for one trip off for a vacation,have reemployment rights aboard the vessel,notwithstanding his refusal to pay an initiation fee,demanded by the officers of the union?

3- Does the First,Fifth,Ninth and Fourteenth Amendments of the U.S.Constitution protect a citizen in his property rights to his job,and his vacation,pension and welfare rights in his union,irregardless of any private contract between a company

and a union which requires membership in good standing as a condition of employment,without giving him a hearing to explain his reasons for refusal to pay an initiation fee?

4- Does Art.I Sec. II of New York State Constitution protect a citizen resident from being dismissed from his permanent job for refusing to pay an initiation fee to a union?

5- Does the Saving to Suitors clause of the Federal Constitution Article 6,Cl I, and the Judiciary Act of I789, I Stat.B allow an action to be brought in New York State Courts in which there was a legal remedy in New York State prior to I789?

6 - Does a seaman have a property right to a permanent job aboard a ship under the Civil Rights Act Of I964,Title 42 U.S.C. Sec.I983,and is that right also protected by the Ninth Amendment to the U.S. Constitution,and the Merchant Marine Act of I920,specifically by Title 46 Sec 599 (a) 4I Stat.I006,Sec I0 (a) ?

7 - Does a member of a maritime trade union who leaves the union involuntarily,regain his membership rights by invoking the

protection of Title 29 U.S.C.A. Sec.402, 412,by claiming he was not accorded due process in his alleged expulsion from the union?

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V Of U.S. Constitution.

"No person shall....nor be deprived of life,liberty or property,without due process of law".

AmendmentXIV Of U.S. Constitution.

"No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States, nor shall any state deprive any person of life,libery or property,without due process of law,or deny to any person within its jurisdiction the equal protection of the laws.

Amendment IX Of U.S. Constitution

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparge others retained by the people."

Article III SEC. 2,Of U.S. Constitution

"The judicial power shall extend ...to all cases of admiralty and maritime jurisdiction."

STATUTES INVOLVED

Title 28,U.S.C. Sec. I257 (2)

Title 28,U.S.C. Sec I33I

Title 29 U.S.C. Sec. I58 (a) (3) Of National Labor Relations Act,Sec. I58 (b) (2) Sec. 8 (a) (3)

Title 46 U.S.C. 599,4I Stat. I006, Sec. IO (a) Merchant Marine Act I920....

"If any person shall demand or receive either directly or indirectly ,from any seaman or other person seeking employment as seaman,or from any person on his behalf, any renumeration whatever for providing him with employment,he shall for every such offense be deemed guilty of a mis - demeanor and shall be imprisoned not more than six months or fined not more than $500."

Title 29 U.S.C.A. Sec.4I2,Sec. 402:

"Member or members in good standing when used in reference to a labor organ- ization,includes any person who has fulfilled the requirements for member - shipin such organization and who neither has voluntarily withdrawn from membership after appropriate proceedings of the Constitution and by -laws of such organ - ization."

Title 29 U.S.C. Sec.523,Sec.603 (a)
73 Stat.540...

"Except as specifically provided to the contrary,nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer.... or other representative of a labor organ - ization....under any other Federal Law or under the laws of any State and except as explicitly provided to the contrary,nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal Law or Law of any state."

Art.I Sec.II of New York State Constit - utition.

"Equal protection of laws,discrimination in civil rights prohibited."

"No personshallbe denied the equal protection of the laws of this state or any subdivision thereof.No person shall, because of race,color,creed or religion, be subject to any discrimination in his civil rights by any person or by any firm, Corporation,or institution,or by the State or any agency or subdivision of the State."

Title 42 U.S.C. Sec 1983 .-Civil Rights Act.

STATEMENT OF FACTS

The petitioner, a seaman, involuntarily left the Union in I950 because the United States Coast Guard refused to issue a Radio Officer's License to him, therefore he could not be employed aboard ship without that document.

He received an inactive assignment slip from the union dated March I7, I950. The official who gave him this slip told him that it would save him a years dues if the Coast Guard reissued him his license before a year was up. In I967 he received the Radio Officers License as a result of suing the Coast Guard Commandant. (Peltzman v Smith, 404 F2d 335 (I968). He returned to the Union in I968 and sailed three and one-half years with a permit card, paying the same dues as a regular member.

After sailing for about one and one-half years the union officials demanded an initiation fee of $ 2,000 verbally from petitioner. He refused to pay telling them that he was not a new member and that hundreds of seamen who had been screened off thier ships by the Coast Guard and who had returned to thier unions as a result

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of the Parker v Lester decision (227 F2d 708 (1955) did not have to pay any initiation fee, but in some cases a small fee to keep their pensions credits up to date. The officials told petitioner that if he did not pay the iniation fee he would lose his Group I shipping list seniority and would have to go on the Group 2 shipping list.

Petitioner tried to get this matter settled by arbitration as provided in the contract, by writing a letter to Secretary of Appeals Board. (Appendix 8, Record appendix A27). After about two and one half months passed and no arbitration, or hearing being available, Petitioner filed an unfair labor complaint with the N.L.R.B. As a result, he was put on the Group I shipping list. Shortly thereafter, the N.L.R.B. sent petitioner a letter asking him to either come to the office and be interviewd about the complaint, or withdraw the complaint, and if he did niether, the N.L.R.B. would dismiss the complaint. Petitioner withdrew the complaint as he wanted to get a ship and work again after being unemployed about three months while endeavouring to settle this dispute.

After Petitioner had sailed on the S/S GreenRidge for nine months,he requested the Captain for one trip off for a vacation,as per union regulations.On arrival in Bayonne,New Jersey May 28,I97I, a union official handed petitioner a letter (Appendix 3) dated January I3 I97I, demanding an initiation fee of $2,000 and threatening him with dismissal from his job if he did not pay.That same day the Captain of the S/S Green Ridge handed petitioner a letter (Appendix 4) dated May 28,I97I,informing him that he would not be rehired without a"clearance" assignment from the union.

Petitioner refused to pay,and complained to the N.L.R.B.They refused to issue a complaint.Petitioner appealed to the 2nd Circuit Court Of Appeals,docket nr 72-I09I, Peltzman v N.L.R.B.That Court refused to review,and did notfile an opinion.Petitioner appealed to the U.S.Supreme Court docket nr 7I-I573.This Court refused certiorari and petitioner filed for a rehearing which also was denied.

Petitioner sued the union in Supreme Court,Special Term sometime in July I97I

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(Peltzman v American Radio Association et al,327 NYS 2d 505),seeking reinstatement into the union,reinstatement to his permanent job aboard the S/S Green Ridge, and damages for wrongful discharge from his employment.The suit was dismissed by Special Term for lack of jurisdiction.The Appellate Division First Department affirmed unanimously,and refused to grant permission to appeal to the Court of Appeals.Petitioner filed an appeal to the Court of Appeals for permission to appeal,and that was denied on January 3,1973.Petitioner is filing this appeal within the ninety days period from that date.

REASONS FOR GRANTING THE WRIT

I.The petition should be granted because the lower Courts erred in ignoring the Constitutional safeguards which protect the individual from his Government's administrators,his employers and unions illegal actions.

2.This Court has never specifically ruled whether Title 29 U.S.C.A. Sec.4I2,402 protects a seaman who involuntarily leaves a union because of the loss of his license by the illegal actions of

the Coast Guard,and-when he regains that license and rejoins the same union,and is told by the officers of that union that he must rejoin as a new member, notwithstanding that the statute defines "Members or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organ - ization and who neither has voluntarily withdrawn from membership after appropiate proceedings of the Constitution and by laws of such organization".

3. This Court in Patterson v Bark Eudora (I90 US I69) was cited by Justice Brandeis in a dissenting opinion in Adams v Tanner 344 US 6I6 (I9I6) as a precedent for protection of the applicant for a job, the Act of Congress Dec.2I,I898,30 Stat.755, 763,which provides among other things:

"If any person shall demand or receive, either directly or indirectly,from any seaman or other person seeking employment as a seaman,or from any person on his behalf,any renumeration whatever for providing him with employment,he shall for every such offense be liable to a

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penalty of not more than a hundred dollars.

Compare Judge Bloom's statement in his order of April 20,I972,denying leave to present new facts,(Appendix 2) that Title 46 Sec 599 does not bar the acts sought by the complaint to be restrained.

Actually sec 599 (a) adds a penalty of a jail sentence to the old Act of I898,besides the raising of the fine from one hundred to five hundred dollars.

4.Petitioner argues that the union could not demand any initiation fee whatsoever because of the restriction in Title 46 U.S.C.A.Sec.599(a) of 4I Stat I006.He also argues that he is still a member of the union under the definition of a member according to 29 U.S.C.A. Sec.402,4I2. Petitioner never received notice of his alleged expulsion from the union on March 3I,I950,only I7 days after the union official had given him an inactive assignment slip.petitioner documented this below in his pleadings,but the union never even answered his complaint and did not put in any documentary evidence.

Petitioner asks if it is logical to assume that the union would expel him I7 days after giving him this inactive assignm ent,when the purpose was to try to save him the expense of paying a years dues if he had taken out a withdrawal card.

5.The defendants rely on Amalgamated Assoc. of Street Electric Ry.and Motor Coach employees of America v Lockridge, 403 US 274 (I97I) 29 Led 473.Petitioner argues that Lockridge does not apply because he was not a seaman,he had not left his union involuntarily,and he did receive notice of his delinquency in dues, whereas hahadhe protection of the Merchant Marine Act,which protects a seaman from the union checkoff on dues and other protection not available to land employees. Also petitioner was seeking reinstatement into the union and this Court held ,and the four dissenting opininons held that Gonzales should have been applied,where the member seeks reinstatement,he can sue in State Court.

6.Petitioner argues that the decision of Judge Bloom,in dismissing the case did not mention even one seaman case.Most of

the cases are strike and picketing situations.Not one mention is cited of the protection of either the U.S. Constitution or the New York Constitution which petitioner relies on to protect his permanent job rights on the vessel he was assigned to and which he left for a vacation.he pleaded the Constitutional rights in his complaint and in his pleadings in all the lower courts.

7.In Wuebker et ux v James (Bowles price administrator intervenor (I944), 56 NYS 2nd 67I.

Syllabus 3 - "A state has the exclusive right to determine jurisdiction,and authority ofits State Courts,to interpret and apply and enforce its laws with respect to contracts made within its borders.U.S. C.A. Const.Art.I ,Sec 8 Amend IO.

Syllabus 8 -"Under Constitutional requirements that all members of the legislature and all executive and judicial officers of the several states shall take an oath to support the Constitution alone,as it is written,is the sole test, and support of an act of Congress or any law promulgated by any other federal

official or any Court decision is not required.U.S.C.A.Const.Art.6.

8. In paragraph I9 of Petitioner's reply affidavit and pleading opposing motion to dismiss (record appendix A I48),he cites cases 2I,2,3,4,5,6,23,24,25,I2,I4,that he can pursue his remedy in state courts while complaining to NLRB,on other aspects of the case.

Case 2:Real v Curran,285 App.Div. 552, 553,I38 NYS 2d 809,8II.In action by expelled member of labor union for judgment declaring void his expulsion and restoring him to membership,mandating issuance to him of union card and for other relief,state court had jurisdiction to order members restoration to union membership even though it did not have jurisdiction to render other relief requested.National Labor Relations Act,SEc 8 (b)(2(as amended by Labor Management RElations Act of I947,29 U.S.C. Sec I58 (b) (2).

Case 3 :Madden v Atkins,I74 NYS 2d 633. Labor unions should not by expulsion deprive thier members of thier jobs without proof,fairly raised and fairly heard, of substantial wrongdoing.

Case 5:Mahoney v Sailor's Union of the Pacific,275 P.2d 440.Reinstatement ordered because of denial of property rights of union member without due process oflaw. Also held that NLRB did not have exclusive jurisdiction of case and state court had power to reinstate Mahoney.

Case 6: Leopold Berman et al,v N.M.U. and various Shipping Co's,I66 F Supp.327, The Court decided it had jurisdiction on complaint of seaman who said they were being discriminated by Union and Shipping Co's.Judge Bicks mad ea settlement and plaintiffs were restored to Union and Ccunsel's fees of petitioner's $ I0,000 was paid by Union and shipping co's.Action arose under Labor Management Relation Act 29 U.S.C. Sec I4I et seq.The Court had jurisdiction by virtue of 28 U.S.C. I337. Steamship Co's claimed NLRB had jurisdiction but Judge Bicks said the Court had jurisdiction.

Case 23: Sullivan v Borrows,2I N.E. 2d 275,303 Mass I97,whereofficers of a union compel a member to relinquish his employment until he pays an unjustified claim, they are liable for the loss suffered by the member because of thier action.

Case I4: Anno.I68 Alr I475.In a proper case an injunction against a threatned unlawful expulsion will be granted and a member of a labor union who has been illegally expelled may be reinstated by the Court,by an action for an injunction and a judgment of reinstatement,according to the practice in the particular state.

-Local I00 of United Ass'n of Journeymen and Apprentices v Borden,tex.83 Sup.Ct. I423,373 US 690,I0 Led 2d 638,reh den,84 S Ct 28,375 US 872,II Led 2d I0I.

MO -Sipes v Vaca ,397 S.w. 2d 658, cert granted,Vaca v Sipes 86 S Ct I863, 384 US 969,I6 Led 2d 680.

N.Y. - Green v Folks,2I5 NYS 2d II6,I3 A.D. 2 ,744.

N.c.-Gainey v Local 7I,International Brotherhood of Teamsters,Chauffeurs, Warehousemen and Helpers Of America, II3 S.E.2d 594,252 N.C. 256.

And a State or Federal Court may have jurisdiction of such dispute in order to restore to union membership a wrongfully expelled member of a union.-N.Y.

Real v Curran,supra:"THe National Labor Relations Board does not have

exclusive jurisdiction where the lawsuit is focused on purely union matters, that is on relations between the individual union members and the union not having to do directly with matters of employment, and the principal relief sought is the restoration of union membership rights."

9. The following cases show the relation of the seamen towards his ship under the contracts between the shipping co's and the unions, in thier collective bargaining agreements.

Southern SS Co v NLRB ,3I6 US 3I,62 S Ct 886,86 Led I246:Formal signing off of shipping articles by seaman on termination of voyage was not conclusive on question whether seaman had been discharged on the ships return to home port, but tenure of their employment was required to be determined in the light of all the evidence concerning the employers employment customs and practices.

In Vitco v Jonich,I30 F supp 945 affmd 234 F2d I6I,"Period of employment" historically meant to the end of voyage but now includes full wages throughout the period of employment, whether employ-

ment is for a voyage or for a definite time.

In National Labor Relations Bd.v Waterman SS Co.309 US 206,2I8,Led 704 ,7II, 60 S Ct 493,and South Atlantic SS Co v National Labor Relations Bd.CCA 5th,II6 F 2d 480,writ of cert den in 3I3 US 582, 85 Led I538,it was held,

Seaman's tenure and relationship are not terminated by the mere expiration of articles.

In Peninsular & O.SS Co v National Labor Relations Bd. CCA 5th,98 F 2d 4II, and in Texas Co v N.L.R.B. CCA 9th I20 F 2d 2I86,it was held,

The Maritime Law ,when in conflict with the National Labor Relations Act,is supreme.

Petitioner argues that his assignment to the ship was a permanent job.He left for a vacation of one trip off.By refusing to give seaman "clearance", the union forced the employer to discharge petitioner, and assigned a union man from the hiring - hall to replace him.(See telegram from employer Appendix 5).In this connection see Brown v National Union of Marine Cooks and Stewards,reported in Court

decisions -N.L.R.A. Vol viii,p I070,
(I04 F Supp 685).

The NLRB regional director instituted an action for injunctive relief under Sec IO (j) of the Labor Management Relations Act.I947.As a result men who were screened off by the Coast Guard and other seamen who had optioned to join a rival union were reinstated to thier jobs,notwithstanding the union's refusal to give these men assignments to these jobs.Answering the defense of the employer thatthe contract provision obligated them to accept only men assigned to them by the union,Judge Lemmon decided that the employer may not take shelter under the contract if there be a showing of unfair practice,since it is the statute and not the contract which is the measure of duty,and the liability. (see Sept I,I97I Letter from employer shipping co,to petitioner,last paragraph, quote As you no doubt know,our contract with the A.R.A.prohibits our selecting or employing Radio Officers.they are assigned by the A.R.A. in accordance with thier shipping rules.(Appendix 6).

In Radio Officers Union of the Commercial Telegraphers Union,A.F.L. v National Labor Relations Board,347 US 17,98 Led 455,74 S.Ct 323,41 ALR 2d 621,the provisions of the National Labor Relations Act by which it is an unfair practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization, 29 U.S.C. Sec 158 (b) (2),

and 29 U.S.C. Sec 158 (a) (3) ,or for a union to cause an employer to practise such discrimination,were designed to allow employees to freely exercise their right to join unions,be good,bad,or indifferent members or abstain from joining any union without imperiling their livlihood.

10.Petitioner wishes to show by the citations of the following cases involving the American Radio Association,before the NLRB,that the previous decisions entered therin have not stopped the A.R.A. from continuing its unfair labor practices, and the illegal contract signed in 1949 still has the same clauses in it that was declared illegal then,and therefore the contract is still invalid because in effect

and actual practice it is a closed shop practice, clearly illegal under the Taft-Hartley Act; but semantically called a union - security clause in the contract. The hiring hall procedures are still discriminatory vis a vis non - members, permit card members, and the employer has to apply to the union for manning his ships and has no right to hire or rehire without a "clearance" from the union.

I. In the matter of American Radio Asso-ciation affiliated with the congress of industrial organization & Carl w. Lundquist & William Steinberg, case no..2-CB - 88, decided April I9, I949, 82 NLRB I344, No. I5I.

Relating to a "closed shop" agreement and to a strike by the A.R.A. to force employers to sign such an agreement. The Decree was consented to by American Radio Association in Docket No. 2I79I US Ct Of Appeals 2nd Circuit , Dec. 28, I950.

2. A decree filed by NLRB against A.R.A. Docket No 24737, filed July I6, I957. The record in this case is not available in the published volumes in the 2nd Circuit. The clerk in the court informed me that there were no other papers available, and

that probably they had been removed by the NLRB.In response to petitioners inquiry about this case,they informed him that they had no records of that case in their files.

3. In thematter of Pacific Maritime Association,successor in interest to Pacific American Shipowners & Its member companies and Radio Officers Union Marine Division,Commercial Telegraphers Union Afl-Cio,Case No. 20-CA-I66 - Decided April 28,I950,89 NLRB No. II5.

In this case the American Radio Association intervened.Board ruled that contract signed after a strike contained illegal hiring - hall procedures and closed -shop agreement.

4. American Radio Association (Pacific Maritime Assoc.) Jack Hajim.Case No 20 - CB- 395 April 9,I957,II7 NLRB No I5I.

Trial examiner ruled union was engaging in unfair labor practices,but the Board ruled to dismiss the complaint because it was filed six months after the illegal unfair practices were committed.(note contains Senator Taft's statement about discriminatory hiring halls.)

5.NLRB v Alaska SS Co;et al (A.R.A.), 22I F2d 357,Feb 26,I954.

Petition on for enforcement for illegally participating in hiring arrangement for preferential treatment to union members. (Granted)

6. NLRB v Alaska SS Co,et al A.R.A., 245 F2d 282,May 22,I957.

Enforcement of back pay order.(Granted).

Petitioner also contends that the union Constitution is illegal.On p 29 Article XII (c) -Calls for automatic expulsion for non-payment of dues,without notice or hearing . (Appendix 7).

On p 32 (e)-Oath which petitioner objects to and will refuse to take.

On p 22 (a) - Trial of officers on charges must be signed by I00 members (one hundred) as contrasted with alleged expulsion of petitioner from union in I950 without notice or hearing.Petitioner argues that this is not due proces or equal treatment under the law but arbitary and illegal action,and contrary to the laws of the land.

On p 26 (Sec 4) - Relating to expulsion of member whose license is revoked by Coast Guard.This section not followed by union in petitioner's case.

CONCLUSION

PETITIONER THEREFORE SUBMITS THAT THE Courts below erred in their dismissal of his suit against the union, and its individual officers, for lack of jurisdiction, his motions for discovery, and a writ of mandamus to reinstate him to his permanent job, and reinstatement to the union he left involuntarily, and that the petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted
Archie Peltzman
8725 I6th Avenue
Brooklyn, New York II2I4
Petioner, Pro Se

APPENDIX I

Opinion Of J Bloom dated December and entered Jan.20,1972

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

ARCHIE PELTZMAN,

PLAINTIFF,

-against-

AMERICAN RADIO ASSOCIATION AND ITS Officers individually and in their respective capacities,W.R.Steinberg, President,Ralph Baird,Vice President,Bernard L.Smith, Secretary -Treasurer,Yoseph Y.Rubin,Ted Berman,Harvey Stricharz,Floyd Hepting as National Council Members

Index No I6274/I97I

Bloom,J. :

By this suit plaintiff seeks a mandatory injunction restoring him to membership in the defendant union,directing that defendant issue as clearance slip requiring his assignment to a specific vessel;and for damages alleged to have resulted from the purported improper dismissal from his job.The motion to dismiss and the cross - motion for directory relief pose the issue of federal preemption and the jurisdiction of this court.

Opinion of J Bloom

At one time more than 20 years agop plaintiff had been a member of defendant. In I949,his license was revoked by the Coast Guard.By reason thereof he was no longer eligible to hold a position on a vessel and the union transferred him to inactive status.

The plaintiff stopped paying his union dues after he had lost his license.On March 3I,I950,he was expelled by defendant under a clause of its constitution which provides:"All members shall pay dues quarterly in advance.All members more than six months in arrears shall be automatically expelled .An expelled member to reenter the Union shall only be able to do so in accordance with the permit card provisions of this Constitution." Defendant asserts that, at the time of his expulsion,plaintiff was in arrears in the payment of his dues for more than six months.Plaintiff does not deny that he was in arrears in dues payments for the specified time.However,he contends that the union,by placing him in an inactive status, relieved him of the obligation to pay dues.In effect, he asserts that his membership in the union was in a state of suspension and that he

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became eligible for reinstatement to active membership upon obtaining a job and paying his dues,without payment of any new initiation fee.Be that as it may, plaintiff thereafter regained his license and,as a permit card member:holder,the union,in I969,referred him to a steamship company which placed him on one of its vessels.Under the collective agreement subsisting between the union and the steamship company all employees in the bargaining unit were required to become and remain members of the union within 30 days next following the commencement of their employment.

While the plaintiff paid quarterly dues as a permit card holder,he never paid the required initiation fee.On January I3,I97I plaintiff was notified by the union that he was required to pay the initiation fee, together with all arrerages in dues,within 30 days.The letter of notification concluded with the sentence " If such payment is not made,we shall have no alternative than to request your immediate discharge by the Company." The plaintiff,contending that his transfer to inactive status in I949,

automatically left him with union membership, refused to pay the initiation fee. Discharge from his employment followed.

II

Following his discharge, plaintiff filed an unfair labor practice charge with the National Labor Relations Board charging that the union had violated Section 8 (b)(I)(A) and (2) of the National Labor Relations Act, as amended (29 U.S.C.A. Sec.I58 (b) (I) (A) and (2). That section provides that it shall be an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of rights guaranteed in Section 7 (29 U.S.C. Sec I57) or to cause or attempt to cause an employer to discriminate against an employee. Section 7 guarantees the right of self-organization for purposes of collective bargaining as well as the right to refrain from activities.

Sections 7 and 8 (b) (2) contain certain exceptions which are here most pertinent. Both incorporate by reference so much of Section 8(a) (3) 29 U.S.C.A. Sec.I58 (a) (3) as exempts from the prohibited

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discrimination discharge of an employee for failure to comply with a valid union shop provision of a collective bargaining agreement.

The National Labor Relations Board, Region 2, by letter dated October 26, 1971, informed the plaintiff that it had investigated the charges and found them to be without merit. Accordingly, it refused to issue any complaint against defendant. Therafter, on October 29, 1971, in accordance with the rules and regulations of the NLRB, appeal was taken by plaintiff to the General Counsel of the NLRB from the refusal of the 2nd Region to issue a complaint. So far as is here indicated that appeal is still pending and undetermined.

The initial action brought by plaintiff against defendant in this court was dismissed, without prejudice, by order of Mr Justice Gellinoff, dated October 6, 1971, on the ground that service of process had been improperly made. Therafter, on October 18, 1971, while plaintiff's charge was still pending and undetermined before the 2nd Region, this action was instituted.

III

The concept of federalism in labor relations finds origin in the interstate commerce and federal supremacy clauses of the Constitution (U.S. Constitution,Article I,SEc.8 and Article vi,).It would serve no useful purpose to trace the applicability of the doctrine ofpreemption to labor relations from the initial,tentative determinations(cf.Allen-Bradley Local no.IIII v Wisconsin E.R..B.; 3I5 U.S. 740;Auto Workers v Wisconsin E.R.B.; 336U.S. 245; Algoma Plywood & Veneer Co.v Wisconsin E.R.B; 336 U.S. 30I; Amalgated Association v Wisconsin E.R.B.;340 U.S. 383) to the emergence of the doctrine as one of general application (Garner v Teamsters Union, 346 U.S. 485;Weber v Anheuser-Busch,Inc; 348 U.S. 468.) It is enough to point out that the full scope of the doctrine soon thereafter found definition in four cases (Guss v Utah LRB,353 U.S. I;Amalgamated Meat Cutters v.Fairlawn Meats,Inc;353 U.S. 20;San Diego Building Trades Council v Garmon (Garmon I),353 U.S. 26;San Diego

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Building Trades v Garmon (Garmon II) 359 U.S.236).These decisions made plain that Section IO (a) of the National Labor Act (29 U.S.C.A. Sec I60 (a), which entrusted power to the Board " to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce" vested the Board with exclusive power to enforce rights protected under Section 7 and to compel cessation of activities prohibited by Section 8.Indeed, they went further in limiting state jurisdiction by pointing out that " In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essential undisputed facts,it is not for this Court to decide whether such activities are subject to state jurisdiction.The withdrawal of this narrow area from possible State activity follows from our decisions in Weber and Guss.The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy".

+ (Garmon II, supra, p.246.) And this rule prevailed where the NLRB, as a matter of policy, refused to entertain a proceeding even though the necessary elements of Board jurisdiction, as fixed by law, were present (Guss v Utah LRB, supra).

Notwithstanding the full reach of the doctrine of preemption as set forth in these cases some slight residue of jurisdiction still remains in the States. Violence (Youngdahl v Rainfair Inc; 355 U.S. 131; Auto Workers v Wisconsin ERB, 351 U.S. 266; United Construction Workers v Laburnum Construction Corp; 347 U.S. 656; Russell v Auto Workers, (356 U.S. 634); mass picketing (Allen -Bradley Local IIII v Wisconsin ERB, supra), and forms of activity imperiling domestic peace are of such paramount state concern that in the absence of clearly expressed congressional direction, the states are not ousted of jurisdiction (Garmon II, supra, p 247). Additionally, the

+ The quoted portion, although stated in different terms, is subject to the interpretation that Congress intended that activities, within the reach of the National Labor Act, which are neither protected under Section 7 nor prohibited under Section 8 are within the allowable area of economic conflict.

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states may,under given circumstances, reach out to affect union membership agreements where,under the authority conferred upon the states pursuant to Section I4(b) of the Act (29 U.S.C.A. Sec I64(b),state law expressly precludes such agreements (Retail Clerks v Schermerhorn, 373 U.S. 746).

IV

Thus far we have dwelt with the doctrine of federalism in labor matters only as it encompasses the relationship of employer and union.The scope of the doctrine is essential to any understanding of its effect upon the relationship between the union and its members.

The first case involving the latter relationship to come before the Supreme Court (Intl.ASSN. of Machinists v Gonzales,356 U.S. 6I7) dealt with a suit in a state court by a member of a union to compel the union to restore him to membership from which he claimed to have been unlawfully expelled and for consequential damages.

Basing its holding on the thesis that

"the protection of union members in thier rights as members from arbitary conduct by unions and union officers has not been undertaken by federal law" (p 620),the court held that the state was not ousted of jurisdiction eventhough under appropiate circumstances such expulsion might constitute forbidden discrimination under section 8 (b) (2) of the Labor Act.

Although Garmon II was decided after Gonzales,no endeavor was made to affect the reach of Gonzales.Not until Amalgamated Assn.etc.v Lockridge (403 U.S. 274) was the conflict squarely presented.In Lockridge,the respondent was a member of the union and was employed by Western Greyhound Lines under the term of a collective agreement which contained a valid union shop provision.In September, 1959,Lockridge rescinded his checkoff authorization.By consequence,he became obligated to pay his dues directly to the union.The constitution and general laws of the union required that monthly union dues be paid by the 15th day of the month.Arrears running beyond the last day

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of the second month resulted in automatic suspension from membership.They further provided that where union shop agreements existed arrearage of union dues for one month would result in suspension from membership and removal from employment.

On November 2,1959,Lockridge was suspended from membership for failure to pay October union dues.Simultaneously, notice was sent to Greyhound and request made that Lockridge be removed from employment.Greyhound complied promptly. A belated effort to cure the default was made by Lockridge.When this was rejected he instituted suit in the state court, contending that the union had wrongfully deprived him of his employment,without just cause;that his suspension was wrongful under the provisions of the union's constitution and general laws and resulted in a breach of contract between him and the union,with consequent loss of his employment with Greyhound.

Thus,the complaint fell squarely within the ambit of Gonzales.Contrary to the holding in Gonzales,however,the court

in Lockridge held that the acts complained of fell within the purview of Section 8.Holding that the states were precluded from assuming jurisdiction over matters which fell,arguably,under the jurisdiction of the Act,the Court pointed out that "nothing could serve more fully to defeat the congressional goals underlying the Act than to subject , without limitation,the relationships it seeks to create to the concurrent jurisdiction of state and federal courts free to apply the general local law.Nor would an approach suffice that sought merely to avoid disparity in the content of proscriptive behavioral rules.Conflict in technique can be fully as disruptive to the system.Congress erected as conflict in overt policy." (pp 286,287)

Thus,the doctrine of federal preemption, now full blown,is applicable,under appropiate circumstances,equally to the relationship of a union with its members as it is to the relationship of union and employer.

V

IN the instant case plaintiff filed a charge

against the defendant with the 2nd Region That charge was dismissed after investigation not because it did not fall within the area of proscribed activities but because it was found to be without merit. Appeal is now pending to the General Counsel of the NLRB.Whether or not a complaint is ultimately issued it is clear under Lockridge that exclusive primary jurisdiction rests withthe NLRB and that this court does not have jurisdiction of the subject matter of the action.Accordingly,the motion to dismiss is granted.The cross motion for a mandatory injunction is denied.

Settle order.

Dated: December , 1971

J.S.C.

APPENDIX 2

Order of J Bloom dated April 20,I972

By orderdated January 20,I972, plaintiff's motion for a mandatory injunction was denied and defendant's motion to dismiss the complaint was granted(see opinion 327N.Y.S. 2d 505). A motion for leave to reargue was thereafter denied.Plaintiff now moves for leave to rehear and renew (Riggs v Pursell,74 N.Y. 370),allegdly upon the basis of"new facts".All that is now advanced is the claim that "46 U.S.C.A. Sec 599 bars the acts sought by the complaint to be restrained.A mere glance at the statute makes it at once apparent that it is utterly without application to the situation here presented.There is,therefore,no warrant for renewal or rehearing of the original determination.Accordingly, the motion is denied.

Dated,April 20,I972

APPENDIX 3

Letter Dated Jan.I3,I97I from union demanding payment.

Affiliated with the American Federation Of Labor and Congress of Industrial Organizations

AMERICAN RADIO ASSOCIATION

270 Madison Avenue New York,N.Y. I00I6
Murray Hill 9-5754 Cable Address:
ARADIOCIO NEW YORK

January I3,I97I

Mr Archie Peltzman
I85 Wortman Avenue
Brooklyn,N.Y. II207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association,AFL-CIO and the Central Gulf Steamship Co,you are required as a condition of employment to become a member in good standing of this organization.

Accordingly,within thirty (30) days from the date thereof,you are required to tender the sum of Two Thousand Dollars ($ 2,000.00.), (together with arrears of all dues and fees, if any) as the initiation fee required for acquiring Union Membership.

If such payment is not made,we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,
s/Bernard L.Smith
Bernard L.Smith
Secretary-Treasurer

HLS:LB
Via Registerd R.R.R.
CC: SS GREEN RIDGE,v/o Wilmington Shipping Co;P.O.BOX I809,Wilmington,N.C. 2840I (Air Mail,Reg.R.R.R.)
cc: Central Gulf S.S.Co,New Orleans,La.

COPY BOUND CLOSE IN CENTER

APPENDIX 4

Letter dated May 28,I97I,Central Gulf SS Co.to Mr Peltzman.

CENTRAL GULF STEAMSHIP CORPORATION
TELEPHONE 529-546I Cable address
Telex 058-7435 Centraship
TWX 8I0-95I-6044
International Trade Mart
No 2 Canal Street
New Orleans,La U.S.A.
70I30

S.S.Green Ridge
New York N.Y.

May 28,I97I

Mr Archie Peltzman
Radio Officer

Dear Mr Peltzman:
In accordance with your request I have ordered a replacement.Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly
s/W.C. Kenopke
W.C. Kenopke,Master
S.S.Green Ridge

APPENDIX 5

Telegram from Central Gulf To Mr Peltzman dated Aug.30,1971

Western UnionTelegram

(57) SYD 168 NSA053

NS LLEOI2 PN POB TLX NEW ORLEANS LA 30 1006A CDT

ARCHIE PELTZMAN

185 Wortman AVE BKLYN

DISREGARD PREVIOUS NOTICE TO REJOIN OUR SS GREEN RIDGE AS ARA HAVE PERMANENTLY ASSIGNED A RADIO OFFICER

CENTRAL GULF SS CORP.

1971 AUG 30 AM II 5

(1050)

APPENDIX 6

Letter from Central Gulf SS Co to Mr Peltzman dated SEPT.I,I97I

CENTRAL GULF STEAMSHIP CORPORATION
Telephone 529-546I Cable Address
Telex 058-7435 Centraship
TWX 8I0-95I-6044
International Trade Mart
No.2 Canal Street
New Orleans,La U.S.A.
70I30

September I,I97I

Mr Archie Peltzman
8725 I6th Avenue
Brooklyn,New York II2I4

Dear Mr Peltzman:

This is in reply to your letter of August I7,I97I requesting correspondence between this office and the A.R.A. in connection with your removal by the Union,from our SS Green Ridge.

We have never corresponded with the Union concerning your case.The New Orleans A.R.A. agent telephoned the writer to acertain the itinerary of the vessel,a few days prior her arrival Bayonne.

After the vessel arrived Bayonne,A.R.A., New York informed the writer telephonically that you would have to be replaced until

APPENDIX 6

Letter from Central Gulf SS Co dated September I,I97I

some details of your standing with the Union were resolved.

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surronding the case,but to avoid our becoming involved in a breach of contract with the A.R.A.,the Master was instructed not to sign you on until you produced a clearance from the Union.

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved,thus the reason for our routine wire notice to rejoin.

As you no doubt know,our contract with the A.R.A. prohibits our selecting or employing Radio Officers,they are assigned by the A.R.A. in accordance with their shipping rules.

Yours very truly,

Central Gulf STeamship Corp.

s/C.E. Whitcomb

Captain C.E. Whitcomb

Manager Marine Personnel

CEW: dh

cc: Mr G.A. Atkinson,N.Y.

APPENDIX 7

Union Constitution,Rules,June 28,1970
Article XII (c) All members shall pay dues quarterly in advance.All members more than six (6) months in arrears shall be automatically expelled.An expelled member to reenter the Union shall only be able to do so in accordance with the Permit Card provisions of this Constitution.
Article XII Sec 3 (e) Before an applicant for membership shall be accepted into the Union he shall be first approved by the National Council,and shall take the following oath:"I solemnly swear to be true and loyal to the Union and the labor cause,and to put into practice the principles laid down in the Constitution and to obey all rules the Union may adopt."
Article VIII Section I (a).Any Officer may be brought to trial on charges signed by one hundred (100) members in good standing over a period of sixty (60) days. The signed petition contsing the charges shall be submitted to the Secretary - Treasurer who shall forward a copy to each member of the National Council for study.Should the charges be against

APPENDIX 7

Union Constitution,Rules

the Secretary Treasurer,the petition shall be submitted to the President.

Article IX.Sec 4.

Any member whose license as a Radio Officer has been suspended or revoked by the U.S. Coast Guard or by any Government Agency,a license or document necessary for employment as a Radio Officer;or who has been denied permission by the U.S. Coast Guard or by any other Government Agency,to ship by reason of his being a poor National Security risk;or who has been found guilty of a felony by a Court of Competent Jurisdiction,may be suspended and/or expelled from membership after due investigation and approval by the National Council subject to further approval by a majority of the members voting at Branch membership meetings held within fourteen (I4) days after receipt of the National Council's decision.The decision of the membership shall be final;provided however,that an appeal may be taken to the next Convention.

APPENDIX 8

Petitioner's Letter to Maritime Institute asking for arbitration.

A.Peltzman
185 Wortman Ave
Bklyn 11207,NYC

Secretary of Appeals Board
American Merchant Marine Institute

Dear Sir,

I am filing this complaint,because theA.R.A. refuses to put my name on the Group I List and because they insist they will not do so unless I pay an initiation fee of $ 2,000.00 in order to become a member.

My position is that I am a member,(see enclosed docustats National Book No 5049 of American Communication Association and Book No 284 of American Radio Assn.Also official Assignment slip date 3/17/50.

I returned to sea after being illegaly deprived of my license by the Coast Guard.I have sailed on three voyages as a permit card member from Group 2 (see docustat).

My position is that in effect I was illegaly deprived of my license and since that suspension was removed,my membership automatically becomes active again,even if 17 years have elasped,since I have already made 3 voyages from Group 2 list,or more than one year and 6 months since I started sailing again in Dec.of 1967.

Please advise me of your decision in this matter.

Sincerely,
Archie Peltzman

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED SEPTEMBER 26, 1972

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on September 26, 1972.

Present -Hon. Owen McGivern, Justice Presiding
Francis T. Murphy, Jr
Aron Steur
George Tilzer
Louis J. Capozzoli, Justices

Archie I. Peltzman,

Plaintiff-Appellant,

-against-

American Radio Association and its officers individually and in their respective capacities, William R. Steinberg, President, Bernard L. Smith, Secretary-Treasurer, Joseph Y. Rubin, Ted Berman, Harvey Stricharz, Floyd Hepting as National Council Members,

Defendants-Respondents,

5607-10

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED SEPTEMBER 26, 1972

Appeals having been taken to this Court by the plaintiff - appellant from (I) an order of the Supreme Court, New York County (Korn, J.), entered on December 1, 1971, granting defendant's motion to strike plaintiff's interrogatories, except for items (g) and (h) therein; (2) an order of the Supreme Court, New York County (Bloom, J.) entered on January 21, 1972, dismissing the complaint; (3) an order of the Supreme Court, New York County (Streit, J.) entered on March 14, 1972, Denying plaintiff's motion to punish defendants for contempt; and (4) an order of the Supreme Court, New York County (Bloom, J.), entered on April 20, 1972, denying plaintiff's motion for leave to hear and renew, and said appeals having been argued by Mr. Archie Peltzman, appellant pro se, and by Mr. Edwin A. Steinber of counsel for the respondents; and due deliberation having been had thereon,

It is hereby unanimously ordered that the orders so appealed from be and the same are hereby affirmed, without costs and without disbursements.

ENTER : HYMAN W. GAMSO
Clerk.

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED NOVEMBER 16, 1972

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 16, 1972

Present -Hon. Owen McGivern, Justice Presiding
Francis T. Murphy, Jr
Aron Steur
George Tilzer
Louis J. Capozzoli, Justices

Archie Peltzman,

Petitioner-Appellant,

-against-

American Radio Association and its officers individually and in their respective capacities, William R. Steinberg, President, Bernard L. Smith, Secretary-Treasurer, Joseph Y. Rubin, Ted Berman, Harvey Strichar, , Floyd Hepting as National Council Members,

Defendants - Respondents,

M-10505

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED NOVEMBER 16, 1972

The above named petitioner-appellant having moved for leave to appeal to the Court Of Appeals from the order of this Court entered on September 26, 1972,

Now, upon reading amd filing the notice of motion, with proff of due service thereof, and the affidavits of Archie Peltzman in support of said motion, and the statement of Edwin A. Steinberg in opposition thereto, and after hearing Mr. Archie Peltzman, appearing pro se, for the motion, and Mr. Edwin A. Steinberg opposed,

It is ordered that said motion be and the same is hereby denied with $20 costs.

ENTER : HYMAN W. GAMSO
Clerk.

ORDER OF COURT OF APPEALS
STATE OF NEW YORK, DECEMBER 28, 1972

Archie Peltzman, Appellant, vs. American Radio Association and its officers, individually and in their respective capacities, et al; Respondents	:	Mo. No. 910

Motion for leave to appeal denied.